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RESEARCH NOTE

Are nonprofit prisons an alternative? Some experiences in the Netherlands

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Outsourcing of detention is complex due to quality risks from incomplete contracts, the public responsibility for sentencing and execution, and related social opinions. In the Netherlands, prison services are extensively outsourced—particularly for juvenile detention and internal forensic psychiatric care—to nonprofit organizations. In the Dutch experience, we have not found differences between public and nonprofit execution with respect to the type of contract, costs, performance indicators such as escapes and violence against personnel. The Dutch experience shows that outsourcing to nonprofit organizations can be an alternative to outsourcing to private entrepreneurs.

KEYWORDS

contracting out, nonprofit organizations, prison services

1 | INTRODUCTION

In recent decades, in a number of Western countries, detention has been increasingly executed by private firms as there was belief that private prisons were more efficient. However, more recent evidence on the cost advantages of private detention is ambiguous (Kish & Lipton, 2013; Lundahl, Kunz, Brownell, Harris, & van Vleet, 2007; Pratt & Maahs, 1999). Moreover, the theoretical literature describes a large number of risks associated with outsourcing prison services to the private sector due to the potential incomplete contracts in which quality is hard to define adequately (Hart, Shleifer, & Vishny, 1997). Glaeser and Shleifer (2001) showed that the nonprofit status of private entrepreneurs weakens the incentives to maximize profits. Therefore, nonprofit outsourcing of prison services might be an alternative.

In this paper, we investigate public versus nonprofit outsourcing of detention in the Netherlands.¹ This paper adds to the literature in at least two aspects. Studies on the outsourcing of prison services are based on experiences in the private—for-profit—sector. As far as we know, this is the first description in literature on the outsourcing of detention to nonprofit organizations. Secondly, it describes the institutional differences and outputs between several types of prisons services in the Netherlands, particularly concerning their accountability and performance. We find no differences

between public and nonprofit execution of juvenile detention and internal forensic psychiatric care with respect to inspections and several performance indicators. Therefore, we demonstrate that outsourcing to nonprofit organizations can be an alternative to outsourcing to private entrepreneurs.

2 | LITERATURE REVIEW AND THEORETICAL FRAMEWORK

The management of prison services is quite a complex responsibility and task. In fact, detaining suspected and sentenced people requires both imprisoning in adequately humane circumstances—by preventing escapes, riots, and so on—and facilitating the re-entry into society through programs and correcting behavior. The debate on in-house provision versus outsourcing of prison services is influenced by a number of aspects that question the possibility of private entrepreneurs executing this public responsibility. The use of force is, by law, an exclusive right of the government, although it might be a necessary instrument for keeping peace in a prison environment. In addition, there is concern that private providers hire too few or unqualified guards to save costs, thereby undermining the safety and security and humane conditions of prisoners. Finally, an imprisonment is primarily meant as a punishment, but it may be used as a preparation for returning to normal society as well. It is doubted whether private parties have the right incentive to reintegrate prisoners adequately because they may have a profit in *increasing* recidivism (Gaes, Camp, Nelson, & Saylor, 2004).

Hart, Shleifer, & Vishny (1997) examined the conditions that determine the relative efficiency of in-house provision versus outside contracting of government services, particularly in relation to prisons. They developed a theoretical model with adverse quality effects of cost reductions to distinguish between in-house and outsourcing and especially apply this framework to organize the thinking on privatization of U.S. prisons. The case for in-house provision is generally stronger when noncontractible cost reductions may have large deleterious effects on quality, when quality innovations are unimportant, and when corruption in government procurement is a severe problem. In contrast, the case for privatization is stronger when quality-reducing cost reductions can be controlled through contracts or competition, when quality innovations are important, and when patronage and powerful unions are a severe problem inside the government. In their application to U.S. prisons, they concluded that the case for in-house provision can be made reasonably persuasively for prisons.

Particularly in sectors with personalized services, we find the nonprofit firm as a kind of mixed form between the extremes of public organizations (for in-house production) and private entrepreneurs (for outsourcing). For example, in the Netherlands, in (mental) health care, education and social services in particular, nonprofit delivery is dominant (Burger & Dekker, 2001). Burger and Veldheer (2001) explained the sector's importance by a long and rich Dutch tradition of private initiatives, by the posture of the government that created a political environment that stimulated nonprofit growth, and—as a crucial factor—the scheme of collective finance and private provision for key welfare state services. This scheme started in education and later spread to health care and social services.

According to Hansmann (1996), the critical characteristic of nonprofit organizations is that they are barred from distributing any profits to persons who exercise control over the firm. Instead, a nonprofit firm can distribute its profits only through improvements in the working environment of the entrepreneur and the employees, which may include lower effort levels, shorter workdays, longer vacations, better offices, more generous benefits, or even improvements in the quality of the service.

In a theoretical model, Glaeser and Shleifer (2001) derived conditions under which self-interested entrepreneurs opt for a not-for-profit status despite the fact that this limits their ability to



take advantage of the profits of their enterprises. They expected to find nonprofit firms in activities where: (a) there are substantial opportunities for reductions of the quality of the good after it is purchased or for other forms of expropriation of consumers; (b) the activity is not too profitable or, more importantly, relies on charitable donations; (c) altruism and public spiritedness are important motivators of entrepreneurs; and (d) it is costly for consumers or employees to change the firms they deal with. In the activities where for-profit and nonprofit firms coexist and information on quality is not easy to verify, they expect the latter to deliver higher quality to consumers.

2.1 | Outsourcing of prison services, empirical results

In recent decades, in a number of countries—mostly due to the efficiency claims of privatization and overcrowding and poor conditions in public prisons—prison services have been offered by for-profit companies. Many studies have attempted to compare the public and the private prisons, although comparability problems exist across levels of security, accounting methods, definitions of service, and measurement of costs (Kish & Lipton, 2013). The quality of the prisons could be reviewed according to their contribution to the reduction of the risk of recidivism. However, other external factors that are not under the control of the prison may be much more relevant than the influence of prison services (Gaes et al., 2004). Analyzing and comparing the true costs and quality of private and public prisons is thus very complex. The empirical literature on the profits of outsourcing prison services does not provide clear conclusions (Kish & Lipton, 2013; Lundahl et al., 2007; Pratt & Maahs, 1999). Private firms often have an advantage in building new prison facilities, both in terms of cost and time, and also have a slight operating cost advantage. Cost savings are typically reported on the prison staff because of reduced nonwage benefits and increased technology-driven efficiency. Alonso and Andrews (2015) found that privately managed prisons perform better on dimensions of quality, such as confinement conditions and prisoner activity, which are more easily measured, while public prisons perform better on dimensions of quality, such as prisoner safety, which are less easily measured and managed.

3 | METHODOLOGY

In this study, we investigate the nonprofit outsourcing of detention tasks. Therefore, we describe, for the different types of prison services, the institutional setting, the type of contracting, several performance indicators, and the results of inspections as far as they are available and test the differences between public and nonprofit prison services.

TABLE 1 Prison services in the Netherlands in 2015

	Number of inmates (average in 2015)	Costs per day (on average)	Public/nonprofit	Inmates in nonprofit centers
Penitentiary institutions	8,375	€240	26 (all public)	-
Forensic psychiatric care centers	1,485	€504	2 public/7 nonprofit in 2015	85%
Correctional institutions for juvenile offenders	515	€638	4 public/5 nonprofit	50%

Source: Custodial Institutions Agency



4 | RESULTS, PRISON SERVICES IN THE NETHERLANDS

Criminals are imprisoned to show that society does not accept violations of the laws and rules. Moreover, it can help victims come to terms with and cope better with their criminal experiences. In addition, a prison sentence makes society a safer place because the perpetrator no longer constitutes a threat when he or she is inside. Finally, imprisonment offers the opportunity to provide detainees with guidance, training, and practical skills so that, during their stay, they can work on their future and prepare themselves for their return to society (Molleman & van den Hurk, 2017). The imprisonment of people is, by law, an exclusive right of the government. Therefore, the state has to take responsibility for the imprisonment of criminals as imprisonment is a considerable reduction of the individual freedom and may come with the use of force. However, the execution of this task can be delegated to other organizations, while the final responsibility is still with the state.²

As Table 1 demonstrates, in the Netherlands, three types of imprisonment of offenders can be distinguished. Criminals may end up in a penitentiary institution—consisting of remand centers and prisons—in cases where they are suspected or convicted of an offense. As all penitentiary institutions (26 at the end of 2015) are public organizations, they are not discussed in this paper.³ A number of the convicted criminals have been declared entirely or partially unaccountable for the offense. Instead of or after their imprisonment, they are treated in an intramural forensic psychiatric center (FPC) (section 4.1). Finally, younger criminals, up to 21 years old, are detained in special correctional institutions for juvenile offenders (section 4.2). For both types of imprisonment, there are public and nonprofit organizations.

4.1 | Intramural forensic psychiatric care

As well as imprisonment, a judge may order forensic care. The most important forensic care measure is placement under a prison hospital order in a FPC. In most cases, this measure is ordered following a stay in prison. Treatment of forensic inmates focuses on changing their behavior in such a way that they will not reoffend. These inmates are given treatment for their disorder or addiction, or they follow a therapy to learn how to handle their disorder responsibly (Custodial Institutions Agency, 2011).

Although the treatment takes place in a separate regime (more directed toward behavioral change through intensive forensic psychiatric care), it is still a correctional setting, with comparable restrictions and safety measures. In 2015, on average, 1,485 people stayed in an intramural FPC, with an average cost of €504 a day per cell.

There are two public centers and seven nonprofit FPCs. In terms of the number of inmates, about 85% are contracted with nonprofit organizations. The nonprofit FPCs are foundations with a special designation. Despite their independent position, the Minister of Security and Justice is authorized to issue an instruction to its Board of Directors in the case of inadequate compliance. As a last resort, the Minister may take over the management of the institution. The Minister appoints one of the members of the Supervisory Board of the institution whose special task is to monitor compliance with the law.

Each year, the Dutch Custodial Institutions Agency (DJI) contracts every FPC with an agreement on the capacity with the associated budget, including objectives regarding the results and quality of treatment. Based on a number of principles established in a starting note, procurement manuals, and implementing protocols, potential providers are invited to make offers for the provision of forensic care.

**TABLE 2** Annual performance indicators for forensic psychiatric centers (per 100 occupied prison cells), 2012–2015

	Average for public forensic psychiatric centers (<i>n</i> = 8)	Average for nonprofit forensic psychiatric centers (<i>n</i> = 26)	Overall average (<i>n</i> = 34)	<i>p</i> -Value on the dummy variable in a Mann–Whitney <i>U</i> test	<i>p</i> -Value on the dummy variable in independent samples <i>t</i> test, with bootstrapping
Annual recidivism during treatment	0.08	0.20	0.17	.43	.30
Number of escapes during treatment	1.97	1.64	1.71	.66	.71
Number of cases of violence against inmates	1.51	2.73	2.44	.29	.12
Number of cases of violence against personnel	4.72	6.35	5.97	.84	.40
Number of valid complaints	12.09	10.28	10.71	.44	.29

Source: Custodial Institutions Agency

The contract provides instructions on performance indicators, for example, about unauthorized absence of inmates, provision of information about inmates' data and their care pathways, and regulatory requirements. To obtain a level playing field between the nonprofit and public organizations, the management contracts of the public FPC are comparable in design. In all cases, the nonprofit centers are part of a regional organization for specialized mental care. Both public and nonprofit FPCs fall under the supervision of several national inspectorates. The inmates are, in general, placed in the FPC in their region. The nonprofit centers originate from several decades ago when internal forensic care was introduced, and the organizations offered this type of care, in addition to their mental care facilities. The possibility of outsourcing to these organizations offers the Ministry more flexibility in the provision of internal forensic care as, in case of changing needs of capacity, it will be easier and less expensive to increase or decrease the number of prison cells (Groenendijk, de Vries, & Svensson, 2011).

To provide an adequate picture of the functioning of FPCs on the basis of reconviction rates, Wartna et al. (2014) studied reoffending rates, controlling for differences in inmates' characteristics, based on individual conviction rates. That being said, due to the limited sample size per FPC, none of the observations of the difference between reconviction rates were statistically significant, and conclusions on a different effectiveness of reconviction rates of the nonprofit FPCs compared to the public FPCs could not be drawn.

Table 2 demonstrates the performance of the FPCs on the most important indicators. None of these differences were significant in a Mann–Whitney *U* test where we tested the hypothesis that one of the subsamples tends to have larger values than the other.⁴ As this result might be the consequence of the low number of observations, we also tested the differences in an independent *t* test using the bootstrapping method (Martin, 2007).^{5,6} However, in the bootstrap power calculations of this Mann–Whitney *U* test, we did not find significant differences either.

4.2 | Juvenile prisons

In the Netherlands, young people aged between 12 and 21 years who have committed an offense are judged under special juvenile criminal law. Serious cases will be brought before the juvenile court, which may order that the young offender be placed in juvenile detention.

Although imprisonment for juvenile offenders is based on a specific law, and the detention takes place in a separate regime (more directed at upbringing and education), it is still occupation in a prison, with restrictions and safety measures comparable to a regular prison for adults. In 2015, on average, 515 juveniles stayed in juvenile detention, at an average cost of €638 a day per cell.

There are four public and five nonprofit prisons for juvenile offenders spread across the country. The Law on Juvenile Prison Care states several rules concerning the designation of nonprofit organizations as a juvenile prison. The nonprofit juvenile prisons are, in four cases, part of a regional organization for youth care. In one case, the nonprofit organization is fully independent and does not perform other activities. The nonprofit institutions are subsidized for providing places for juvenile offenders. In terms of the number of inmates, about 50% are contracted with nonprofit organizations. The management of the nonprofit juvenile prisons is appointed by the supervisory board of the mother organization it belongs to. In the case of financial mismanagement, the foundation bears the risk. In this case, both public and nonprofit juvenile prisons also fall under the supervision of several other national inspectorates. The nonprofit centers originate from several decades ago when specific juvenile prisons were introduced and the organizations offered this type of care, in addition to their mental care facilities. The possibility of outsourcing to these organizations offers more flexibility as, in case of changing needs of capacity, it will be easier and less expensive to increase or decrease the number of prison cells (Groenendijk et al., 2011).

As the public and nonprofit organizations have the same task to do, the content of the contracts and the output indicators are comparable. The annual management contract (for a public prison) or performance agreement (for a nonprofit prison) contains agreements on the products (type of detention; budget/grant, performance indicators; the security of the buildings, which has to conform to the standards of the DJI; provision of information about prisoners' data and their care pathways; and regulatory requirements, etc.). The annual report consists of the realization of the management or performance contract, a financial report, and a report on the performance indicators. The budget for each prison is based on standard prices per juvenile detainee per diem, with supplements for specific products or circumstances. In the case of degree of occupation of less than 90% of the number as used in the management contract, the budget is cut. If the center reports a surplus in its budget, it may add it to the reserves of up to a maximum of 5% (for public prisons) or 10% (for nonprofit prisons) of its budget. Since 2010, all juveniles in a correctional institution have participated in a compulsory daily program, including care, education, and treatment.

TABLE 3 Performance indicators for juvenile prisons (per 100 occupied prison cells), 2012–2015

	Average for public juvenile prisons (<i>n</i> = 16)	Average for nonprofit juvenile prisons (<i>n</i> = 20)	Overall average (<i>n</i> = 36)	<i>p</i> -Value on the dummy variable	<i>p</i> -Value on the dummy variable independent samples <i>t</i> test, with bootstrapping
Number of escapes during detention	0.41	0.35	0.37	.56	.88
Number of escapes during furlough	12.36	12.65	12.52	.92	.93
Number of cases of violence against juveniles	32.25	33.18	32.77	.47	.92
Number of cases of violence against personnel	14.70	30.60	23.53	.40	.08
Number of valid complaints	25.59	12.57	18.36	.27	.12

Source: Custodial Institutions Agency

TABLE 4 Judgment of the inspections on juvenile imprisonment, 2012–2016, on a 4-point scale^a

	Average for public juvenile prisons (<i>n</i> = 4)	Average for nonprofit juvenile prisons (<i>n</i> = 5)	Overall average (<i>n</i> = 9)	<i>p</i> -Value on the dummy variable
Legal status of juveniles (incarceration, house rules, activities, accommodation, nutrition, contact, access to care, discipline, procedures for complaints)	3.2	3.3	3.2	.90
Social contact with juveniles (screening, treatment, reports and documentation)	2.9	2.9	2.9	.76
Internal safety (calamities, antiaggression treatment, discouragement of drugs)	2.8	2.6	2.7	.68
Safety of society	2.3	2.8	2.6	.29
Reintegration into society (reintegration activities, furlough)	3.0	3.2	3.1	.68
Organizational aspects (personnel, communication, integrity, evaluation)	3.3	3.3	3.3	.997

Source: Custodial Institutions Agency

^a The scores are on a 4-point scale. 1: Does not meet the relevant standards and expectations, 2: Meets to a limited extent the relevant standards and expectations; 3: Does predominantly but not completely meet the relevant standards and expectations, 4: Fully compliant with the relevant standards and expectations (the functioning at this criterion is an example for other prisons).

Table 3 shows the performance of the juvenile prisons on the most important indicators. None of these differences were significant in a Mann–Whitney *U* test.⁷ As this might be a consequence of the low number of data, we also did a robustness test for the Mann–Whitney results using the bootstrapping power method in an independent *t* test (Martin, 2007). However, in this test, we did not find many significant differences either, except for the difference in the number of cases of violence against personnel, which are higher in the nonprofit centers.

Based on the visitations of the inspectorates, we compare the quality of the juvenile institutions in a number of aspects. Based on these scores, we tested for each of the 22 aspects using ordinal regression, with the inspection score as a dependent variable, the public/nonprofit status as a dummy variable, and the month of the inspection as a control variable. We saw no significant differences between the public and the nonprofit prisons for any of the criteria, although this might have been due to the 4-point scale of the data and the lower number of data.⁸ Table 4 shows these data, aggregated by a number of aspects.

5 | DISCUSSION AND CONCLUSION

The case for in-house provision of services is generally stronger when noncontractible cost reductions may have large deleterious effects on quality, and therefore, the case for prison privatization seems not so strong. Outsourcing to entrepreneurs with a nonprofit status can be alternative as they do not have the incentive to maximize profits. The nonprofit character should prevent the efficiency incentives, leading to lower quality due to profit claims by the owner of the organization. On the contrary, the potential efficiency of the nonprofit firm will be invested in the service levels. In literature, this has been worked out for several types of personalized services but not for prison services. Interestingly, in the Netherlands, juvenile detention and intramural forensic psychiatric care are executed by both public and nonprofit organizations.

The main institutional difference between the two types of organization is that, in principle, the nonprofit firm bears the risk of mismanagement itself, while the risk of mismanagement of the

public organization is for the Ministry. The possibility of outsourcing to these organizations offers the Ministry more flexibility in the provision of capacity in times of fluctuating needs for capacity. We found almost no significant differences in efficiency and performance indicators, such as escapes and violence against personnel between public and nonprofit organizations, either for juvenile imprisonment or intramural forensic care. Therefore, despite the public responsibility and the complexity due to quality risks from incomplete contracts, we find that the outsourcing of prison services to nonprofit organizations can be an alternative to outsourcing to private entrepreneurs.

There are opportunities for future research in more in-depth analyses of the differences in the internal organization between public and nonprofit organizations with respect to their internal management of the processes of detention and their impact on quality.

NOTES

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²In the Netherlands, The Dutch Custodial Institutions Agency (DJI) is responsible for the enforcement of these sentences.

³They are directly governed by the DJI agency; the prison directors are appointed by the board of the agency, and the employees are civil servants in the service of the Ministry of Security and Justice. The agency bears the risk of financial mismanagement of individual prisons.

⁴For this Mann–Whitney U test, we needed the observations to be independent, which we have assumed, as inmates are placed in the prisons in their own region, so there is no a priori reason for the population of inmates to be different between institutions.

⁵Martin (2007) showed that, especially in the case of a small number of observations, such a bootstrap power method is important for the robustness of (nonparametric) tests. The technique can be used to estimate the accuracy of an estimator and may be useful for analyzing small datasets where prior information is sparse, distributional assumptions are unclear, and where further data may be difficult to acquire.

⁶We thank José Manuel Alonso for this suggestion, and these results are available upon request.

⁷For this Mann–Whitney U test, we needed the observations from different prisons to be independent, which we have assumed, as inmates are placed in the prisons in their own region, so there is no a priori reason for the population of inmates to be different between institutions.

⁸We also tested the differences for the six groups of aspects, using fixed-effect dummies as control variables. None of the results were significant in these models either.

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